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ABSTRACT

Lawyers who volunteer to teach youngsters about law and the legal process will find this special issue of "LRE Project Exchange," which contains lesson plans and suggestions from teachers and other lawyers, useful. "Sure-Fire Presentations" (A. Gallagher) offers practical suggestions for making classroom presentations more effective. "The Case of the Professional Tap Dancer" (A. Gallagher) is a lesson plan for use with early elementary students that examines rights in conflict and conflict resolution. "Teaching about Contracts" (L. E. Shefsky) uses role-playing to introduce children in grades K-4 to some of the main concepts involved in contract law. "People Who Make Courts Work" (D. Greenawald) is a lesson plan designed to teach students in grades K-3 about due process. "Mediation and the Adversary Process" (M. Smith) can be used with students in grades 5-12. This lesson plan focuses on conflict resolution by contrasting mediation with the adversarial process. "Teaching about Search and Seizure" presents strategies for introducing students in grades 9-12 to the Fourth Amendment by applying Fourth Amendment protections to school situations. "How Judges Decide" (S. S. Abrahamson) is a presentation intended for middle and secondary students that explains the Wisconsin judicial system using audience participation. It could be adapted for use in any state. "Twelve Hints for Lawyers" (L. A. Williamson, Jr.) offers 12 suggestions for lawyers preparing to address public school students. (JB)

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LRE PROJECT EXCHANGE

Spring 1986 Volume 6 Number 1

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BAR/SCHOOL PARTNERSHIP PROGRAMS

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LRE PROJECT EXCHANGE

Sure-Fire Presentations

by Arlene Gallagher

The purpose of this article is to give lawyers who are planning to work with students some practical suggestions that will make their presentations more effective. These "tips" should be helpful whether you are planning to visit a school one time on Law Day or will be going several times. Many of the following suggestions came from classroom teachers who have had extensive experience working with lawyers in the schools. Other suggestions came from lawyers. Though my examples are drawn from elementary schools, the tips should work well for all students.

Getting to Know Your Client(s)

If possible, meet with the classroom teacher before you go to the school, or at least have a telephone conversation to discuss your presentation and the class you'll be visiting. You might consider sending this article to the teacher and use it as a basis for your discussion. More than likely the teacher will have additional suggestions or might want to modify some of these depending on the class you'll be visiting.

An initial meeting is usually about what the lawyer plans to do but you will be even more effective if you also get some information about the class. Classes, as well as students, have a kind of personality. Ask questions about the class. Are they quiet? Active? Noisy? How is their attention span as a group? Are there certain students who always speak up or others who never do? It's easy to get monopolized by the very bright, verbal student and ignore the quiet child who may have an interesting point to make or question to ask.

The classroom teacher can be very helpful to you during your presentation, so don't hesitate to ask for assistance. You don't have to "be the teacher." Pat Jarvis, a fourth grade teacher in Rhode Island, says she feels free to interrupt a class discussion to clarify a student's question or suggest that the lawyer spend more time on a legal point. The teacher can work with you and handle any management or discipline problems. If you want students to sit on a rug with you, the teacher knows how to get them there. Inviting 30 nine-year-olds to come to the front of the room can cause a stampede.

Pacing the Presentation

Children can't sit and listen as long as adults, so consider the students' attention span. Work out some hand signals with the teacher ahead of time so that you can get cues if you're going too fast, or if you need to alter the pace. Judy St. Thomas, Director of the Rhode Island Legal Educational Partnership Program, recommends that if you have the time it would be very helpful to visit the class and observe before you do your session. Ask to see a law-related or social studies lesson, or one in which the students will be discussing something that touches on law or citizenship. This will give you a chance to hear their vocabulary level and how they verbalize their thoughts. It will also give you a chance to observe the teacher's style. All teachers are different, and their styles vary just as much as lawyers'.

Finally, ask the teacher to have name tags either on the students or on their desks. You will be amazed at how much more effective you will be when you use a child's name. Imagine how clients would feel if you didn't know their names.

Teaching About the Law

This special issue of *LRE Project Exchange* is packed full of help for lawyers who volunteer to teach youngsters about law and the legal process.

LRE Project Exchange is produced by the American Bar Association's Special Committee on Youth Education for Citizenship, as part of its efforts to build better bar-school partnerships. For more information about how the ABA can help you, contact Charlotte C. Anderson, Project Director, 750 N. Lake Shore Drive, Chicago, IL 60611, (312) 988-5731.

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Many of the ideas and strategies contained here were originally published by the American Bar Association's magazine, *Update on Law-Related Education*, in its Winter, 1986, edition. The complete issue, which includes many additional strategies for lawyers teaching at all grade levels, is available from the ABA at the address listed above.

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Whatever topic or plan you come up with, try it out. Borrow some children if you don't have any of your own, but use children close to the age of the students you'll be meeting in school. Three years age difference doesn't matter much when you're thirty-five, and the difference is even less if you're sixty-five, but a seven-year-old is *very* different from a ten-year-old. Fifteen minutes with a small sample of children will be time well spent.

Time: The Limited Resource

Everyone's time is valuable. You want to make the best use of time possible, and scheduling a trip to an elementary school can be a problem. Most teachers are willing to be as flexible as possible, and they'll rearrange their teaching schedule to fit your availability if they can. However, don't agree to go during recess or lunch, two very important activities to children – and adults. Remember that when you're calling to schedule a visit the teacher probably won't be able to talk to you while class is in sesson. Try to call before or after school, or ask if you can call the teacher at home.

Thirty to forty-five minutes is about the maximum length of time to spend with elementary students, and that should include as much participation by them as possible. Once you have made the appointment, try very hard to keep it. Even twenty minutes late might mean that there's no point in going because the class is by then scheduled for something else. If you have to cancel, call as soon as you know that you can't make it. If you have to call that day, even a couple of hours warning will make it easier for the teacher to plan another lesson.

Your Place or Mine

Most lawyers think working with elementary students means going to the school. Marj Montgomery, a teacher in Newton, Massachusetts, says not to overlook the glamour of having students come to your office, or meeting them in court. While you may think that a lawyer's office would be boring, it won't be to the children. Sitting at a lawyer's desk, or in a jury box, or taking the judge's chair for even a minute does a lot for a student's perspective.

Marj says that a big treat for her eighth graders is to go to Jay Flynn's office at Parker, Coulter, Dailey and White to discuss a mock trial they're preparing. They go in small groups or four or five, and this saves Jay's time because he doesn't have to travel to and from the school. Sixth, fifth and some fourth graders are perfectly capable of taking a mini field trip on their own. If you have students come to your office, don't have your calls held. They'll understand more about what you do all day if they see you doing some of it.

Choosing Your Topic: How Much Can You Cover

You probably know the story about the six-year-old girl whose mother was an engineer and father was a lawyer. One day she asked her mother a question about the law. "Why are you asking me," her mother said. "Daddy is the lawyer. Ask him. I know he'd love to talk to you about the law." "Yes," said the six-year-old, "but I don't want to know *that* much about the law."

Accept the fact that you won't be able to tell the class everything about the law. Try to focus on one or two legal principles or procedures and be satisfied that you will probably only be able to introduce these ideas, not cover them with any thoroughness.

A good topic is often one that relates to what students are currently studying, or one that interests them, or one that they can apply to their own lives. The classroom teacher may not give you a topic, and in that case you have the luxury, and the difficulty, of selecting one. This issue of *Exchange* has several ideas. If you are reading a photocopy of this article given to you by a colleague, coerce that friend into letting you borrow the whole issue. Be sure to read the article by Lloyd Shefsky (p. 5) which describes a classroom experience in vivid detail.

In Shefsky's strategy, the prop is inspired: chocolate bars. Candy will always capture a child's interest. Shefsky uses the prop very effectively, but you can use all kinds of props to enhance your presentation. The everyday trappings of your trade such as law books, contracts, or wills can be used to illustrate the point that laws are written down. A visual picture of the problem you are discussing will help children focus on the facts, identify the parties involved and consider the location of the problem.

Don't hesitate to use real anecdotes. Children like to hear about real things that happen to real people, so anytime you can make a point with an anecdote, do it. You

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can "borrow" your colleagues' anecdotes if you can't think of any interesting ones. Be ready to be open and frank with children, and don't be surprised if, when you say "Any questions," they ask you some personal ones. A favorite is: How much money does a lawyer make?

Modifying the Socratic Method

Use your education and training as a lawyer. It will enable you to ask questions in a way that leads students to think through a problem, analyze it, generate potential solutions, and consider the consequences of those solutions. Your skills as a negotiator can lead students to resolve conflicts in a manner that considers various viewpoints and results in consensus decision-making. If you can help children to acquire these skills, they can use them in their daily lives. Using this problem-solving approach, a legal principle or procedure can be explained in a context, not as an abstract idea.

The same principle or procedure can be illustrated in a number of contexts. For example, due process and our common law heritage contain basic ideas even small children can readily understand:

1. There should be rules made in advance, and there should be fair procedures to enforce them;
2. There should be a role for the people in determining the rules and in enforcing them.

After selecting the problem, try to think of ways in which you can have the students apply these or other basic points. This will make your time with a class much more valuable because the teacher and students can continue to apply the ideas you have presented in other contexts.

The example included on page 4 shows how one lawyer works with a class of second graders. The activity can be done with older students, but a younger class has been chosen here to demonstrate that the law can be discussed with very young children. They may use simpler vocabulary, but young children can deal with complex ideas such as equality and justice.

Interaction: Rolling up Your Sleeves

Strive for some informality in the classroom so that children will feel comfortable talking to you. All of the teachers I spoke to said, "Tell the lawyers not to talk down to the children but tell them to talk on the children's level." Good advice but hard to know how to follow.

Try to take the students' perspective. You will probably be taller than most of them and you'll look like a giant to first graders. It's hard to interact with a giant. You can make them more comfortable by being physically on their level. Sitting on the floor or on a chair in a circle helps a lot with young children. Sitting on a desk helps with older students. Try to position yourself so that your eye level is the same as theirs'.

A Rolling Stone (Or Ham) Gathers No Moss

If the students are seated at desks and it's obvious that you are going to have to stand, don't stay at the front of the room. This position encourages you to fall into a lecture style which is ineffective with children, except for very short periods of time. Move around. Go up and down the aisles. Make direct eye contact with the student who is speaking. If you're a person who can "ham it up," do it.

Use the chalkboard, the oldest teaching tool. Don't be afraid to use a legal term like "habeas corpus," especially with older students. They'll love it. Just be sure to write it (print it for young children) on the chalkboard and define it.

A good way to break out of the lecture mode is to get the students talking. You will need to direct the discussion, though, or you might find yourself listening to endless stories about pets, new babies and favorite TV shows. You want to encourage discussion but keep to the topic. Don't be afraid to politely interrupt a child or to ask children to put their hands down while you're making a point.

Most interaction in classrooms goes from teacher to student and student to teacher, but with little student to student communication. You can encourage this very easily. A simple, "Jimmy, what do think of what Mary just said?" will help.

Have the children role play whenever possible. Lloyd Shefsky uses this technique very effectively with the chocolate bar problem. In the activity I've presented on page 4 the teacher and lawyer have the students pretend to Harry and Bill. Ask the class what they would decide if they were one of the parties involved, or if they were a judge or a member of a jury. After they have expressed one viewpoint tell them to switch. For example, "All of you who were Harry the Tap Dancer, now you're poor Bill who can't sleep at night because of all the tapping above him."

The Price of Success

If your visit goes well, you will probably be invited to come back. The good news is that it will take less time to prepare for your second appearance and you can use the same plan if you're meeting with a different group of children. Using the same plan several times gives you the advantage of being able to modify and improve based on your experience. I know several lawyers who would like to be able to try a case a second time, and this is your chance.

The not-so-very-bad news is that all of this does take time, but the compensation comes in the form of satisfaction and the thank you notes you'll receive from children; fees well worth the effort.

Peter Hannan

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Dispute Resolution

The Case of the Professional Tap Dancer/Early Elementary

Arlene Gallagher

Here is a lesson law professor Ted Occhialino does with second graders. He usually joins the class after the teacher has presented the situation to the kids.

In this case two friends, Harry and Bill live in an apartment building. Harry lives on the second floor, directly over Bill. Their friendship is in trouble when Harry becomes a professional tap dancer but can only practice late at night, which keeps Bill awake.

Rights in Conflict

Harry and Bill lived in an apartment building. Harry's apartment was directly above Bill's. They were pretty good friends. Sometimes they went bowling together. Their friendship ended when Harry decided to become a profssional tap dancer.

"I don't have anything against tap dancers. Harry," Bill said. "But do you have to practice *every evening*. The noise is driving me crazy."

"Sorry," said Harry. "But I have to practice if I'm going to be a pro. Besides, it's a free country, and I can do whatever I want in my own home. My home is my castle, as they say."

"Sure," said Bill. "But what about my rights? You're disturbing the peace. *My peace*."

Harry and Bill have a problem. Their rights are in conflict. Conflicts are a natural part of human relationships. Everyone gets into fights or arguments once in a while. Sometimes people can resolve their conflicts but sometimes they cannot. A third person can often help to resolve the conflict between two people. That person has to be someone who can see both sides of the argument and come up with a solution that's fair to both people. In a court that "third person" is a judge.

Sorting It Out

Ted's strategy as a resource person is to help youngsters think clearly about the situation. He ask them to:

- Identify the problem;
- State some possible solutions;
- Consider the consequences of each solution;
- Make a decision that is legal and fair to all.

In this case, what are the two rights that are in conflict?

1. Harry's right to practice his profession in his own home. Many people do this.
2. Bill's right to have peace and quiet in his own home. People have a right to a reasonable amount of quiet in their home.

There are many ways to resolve this conflict and some solutions are better than others because they are fairer to the people involved.

Ted uses a role play to state these points. He tells half of them to pretend to be Bill and the other half to be Harry. He leads a general discussion, calling on Bills and Harrys. (For older children you can have them pair up and try to resolve the problem in a way that satisfies both parties.)

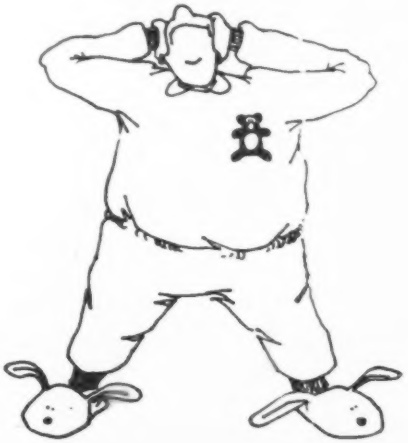
Sometimes the class comes up with some interesting solutions, such as carpeting Bill's ceiling or having them switch apartments. It is important to encourage children to try to resolve conflicts initially without third party intervention. The court should not be seen as a first resort for conflict resolution.

Or you can present possible solutions and ask the children to decide if they are fair.

This problem can also be used to discuss the basic point that "there should be rules made in advance and fair procedures to enforce them." There was no rule in this apartment against tap dancing. Would it be fair for the landlord to make one after Harry started tapping? What if there was a rule against pets and Bill got a huge dog that barked every time Harry tapped? What about Bill's right to a certain amount of peace and quiet? How can this be balanced with Harry's right to practice his profession?

Encourage children to discuss why it is important to know the rules ahead of time. Ask them about games they play and the rules for them. What happens if someone breaks or changes a rule?

"Rights in Conflict: The Case of the Professional Tap Dancer," from Living Together Under the Law: An Elementary Education Law Guide. *Author: Arlene F. Gallagher, 1982. Publisher: Law, Youth, and Citizenship Program of the New York State Bar Association and the New York State Department of Education, Albany, New York, 12234.*



Teaching About Contracts/Grades K-4

Lloyd E. Shefsky

Can little children understand contracts? Should they be taught to understand contracts? You bet! My personal experience shows that certain rudimentary principles of contract law are understood intuitively by many, if not all, five-year-olds.

Here's a step-by-step outline for introducing lower elementary students to some of the main concepts involved in contract law as the "stuff" of attorneys' work. This material is introduced in a way that youngsters find exciting and interesting. The strategy is a role-play in which elementary students participate in negotiating a contract and resolving a dispute from knowledge they already possess and experience they already have.

The genesis of the plan presented below was an announcement by my five-year-old son that the parents of his kindergarten class were invited to explain what they did for a living. Parents were to be scheduled individually on different days.

How was I to explain to kindergartners the working world of an attorney? If few adults fully understand the legal issues of business law, how could I explain them to a class of five-year-olds, in spite of their above-average intelligence, sophistication, and positive orientation to the law?

Choosing a Topic

The teacher of my son's class had recommended that I limit my presentation to a maximun of 30 minutes, preferably less. Because the attention span of elementary students is short, the presentation had to be both stimulating and concise. For this reason, I quickly rejected a description of a day in my working life as well as a description of a complicated and/or unusual case. (I am pleased to report that at the end of my 30-minute exercise, when attention spans were indeed beginning to show signs of waning, the teacher informed me that I had held class attention far longer than those parents relying on oration.)

There are additional constraints when addressing K-4s in contrast with older students. Limited life experience and substantive knowledge dictate a teaching exercise set up ahead of time within tight limits.

Contractual arrangements permeate our society, and disputes over these arrangements are everyday occurrences for attorneys and laymen. Children, too, enter contractual relationships whenever they go to a movie or borrow library books. Children negotiate simple contracts whenever they promise to relinquish one comic book for another or trade baseball cards.

Disputes may arise after contracts are consummated for a variety of reasons—one party cannot or will not fulfill the agreement or is perceived as not living up to all or part of the terms of the contractual agreement. In the example of the children's exchanged promises, a comic book may have missing pages.

A complex legal issue that frequently arises is known formally as a "mistake of fact." According to Black's Law Dictionary, a "mistake of fact" is an unconscious ignoring or forgetting of a fact relating to a contract, or a belief that something material to the contract exists or has existed when, in fact, it does not nor ever has existed. It is not, however, a mistake caused by a party's neglecting a legal duty. A "mistake of fact" can be mutual or not, each with differing legal results.

Negotiating a contract and then resolving a dispute over a mistake of fact was the focus that I chose for explaining my work as an attorney. This is a legal situation arising again and again in the real world of business and, indeed, everyday life. The next step was devising and planning an appropriate situation for "acting out," so that I could instruct my kindergartners by allowing them to participate.

Planning Ahead

When legal professionals accept requests to contribute to law-related education projects, careful preparation is perhaps the most important prerequisite, just as it is for trial or negotiating a transaction. No matter how short and simple the instructive session is to be for the K-4s, *careful* preparation is vital. An ill-prepared speaker can fall back on *ad hoc* discussion and "thought" questions when facing high school students; you can't disguise lack of planning when instructing K-4s.

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My preplanning for my son's class involved asking him about the "sweet-tooth" preferences of his classmates. I discovered that at least two of them were very fond of chocolate bars, but that one was devoted to plain chocolate and the other strongly preferred chocolate with nuts. It is advisable to know the likes and dislikes of several classmates ahead of time in case substitutes are needed.

Bringing Props

The next step is to bring props. You should bring your own to class rather than assume that an elementary school is prepared for all contingencies. My props were few and very easy to assemble:

1. A black crepe-paper "robe" suitable for a kindergarten-size judge. A sheet of black crepe (or tissue) paper available at most variety stores works quite well once a hole is cut in the center to go over a child's head.
2. Enough chocolate bars for the entire class, some plain and some with nuts. Only one of each kind will be used initially and shown to the class; the rest should be hidden from view. Unknown to the class, however, one of the two bars in full view is actually an empty wrapper made to look like an actual candy bar. (Substitutions can be made here so long as there are two items similar in intrinsic value but variable in their preferred value.)
3. A Dictaphone. This was originally for my own later enjoyment, but recording the class exercise can also serve as a useful learning device for the entire class. Children love to hear their recorded voices, and the teacher can play back the classroom activity, perhaps on the following day, for a short discussion or a question/answer period about simple kinds of contracts the children would understand.

Involving Students as Active Participants

Although much has been written about the value of role-playing as a teaching device, there is some reluctance in using it with lower elementary students. My experience will hopefully dispel this reluctance.

As soon as I arrived in class, I assigned one child to be the judge (in my case my son), followed by "hands up" voting on preferences for chocolate bars (with or without nuts). I then asked for two volunteers, one to represent each candy-bar preference, with my selection guided by what my son had told me in the planning stage.

A single bar of each of the two types of chocolate bars was placed on the "judge's" table in front of the class, and each of the two volunteers was asked to stand behind but not touch the bar he *least* preferred. I then told these two students that, even though each had received the kind of bar he did not particularly like, they were both free to talk to each other and work out an arrangement to exchange the assigned bar if they wanted to do so. The one condition I specified was that each must speak into the Dictaphone, one at a time. The two volunteers quickly discussed an exchange of chocolate bars to satisfy each other's preference. When both were satisfied that a "deal" had been reached, I suggested each pick up the candy bar he had obtained in the "negotiated" exchange.

If the negotiating session was consummated quickly, the concluding portion of the exercise involved a more complicated legal issue. In a business deal, one party does not always get what he thinks he bargained for. Thus, in the classroom, one of the children was very surprised and chagrined to discover that he had received an empty wrapper and not the chocolate bar he assumed was there. When I asked the "cheated" child to express his feelings into the tape recorder, he expressed every legal concept of "mistake of fact." Interestingly, at no time did he resort to an allegation of fraud, since it was clear that the child who had received a real candy bar knew nothing of my deception.

The child with the candy bar, of course, had quite different opinions about what constituted a fair resolution, saying that "fair is fair" and "a deal is a deal." Having exhausted all of his logical arguments, the child with the empty wrapper then suggested that perhaps they should split the candy bar. The owner of the bar promptly rejected this suggestion, commenting that he couldn't understand why his classmate would want to split the bar since the other boy didn't even like that kind of bar in the first place.

During all of this discussion, it should be noted that neither child became belligerent or teary. My role as attorney-leader involved some directing, but directing should be minimized as much as possible to allow the children to handle their own bargaining and dispute settlement. Once assignment of roles had been made and the few instructions given, I found my main job was to act as occasional prodder when talk bogged down.

Ultimately, the judge was called upon to decide the dispute in a brief, "mini mock trial." He concluded, in five-year-old language, that while there was merit on both sides, he felt his two classmates should split the sole candy bar. No doubt, a judgment based on fairness, although one cannot ignore the fact that he was concerned about his ability to coexist with classmates. (Is that very different from our common law tradition?)

Once the verdict was handed down and accepted, without any adult coaching, I then distributed my surprise supply of hidden candy bars to the entire class, including the child with the empty wrapper.

Concluding

The happy class listened to a brief word about what I do for a living and the role of deals and disputes in this work. I explained very simply that people constantly get into arguments, because one person thinks that a situation, not necessarily another person, has been unfair, like the child who had expected a candy bar but got only paper. When someone feels hurt at losing to another what he thinks should rightfully be his, he and the other each hire an attorney to solve the problem. Because lawyers are experienced and know the rules, they can make a deal for the person each represents (the client) and then help decide a fair result if the deal later turns out differently than expected. Because lawyers are not so involved – they do not get the candy bars from the agreement – they can more easily reach a bargain or deal and resolve a later dispute. Finally, if even the lawyers can't agree or persuade their clients to agree, the lawyers and clients can go to court and allow a judge to make a decision.

A major value of this little exercise was its revelation about the capacity of lower elementary students to apply certain concepts of fairness and common sense which, after all, underlie law in general. The arguments made by the two student participants sounded amazingly familiar to anyone who has witnessed lawyers arguing the merits of a disputed transaction on behalf of clients. Although the language and presentation of lawyers are more sophisticated, the youngsters' reasoning process was very similar to theirs. The judge's verdict, too, was very like the verdicts in numerous court cases following meetings of counsel in the judge's chambers.

The children began to learn about the system of formal rules and informal practices which institutionalize the same rules of fair play that most of them have already begun to internalize. A definition of what is just may vary among this age group, as it does among a group of adults, but it exists nonetheless. The brief exercise in contracts reinforced the children's understanding that even though events may seem unfair to one party, there *is* something that can be done to rectify them in a reasonable way.

The ability to exercise control within the rules was another valuable lesson. Although I had set up the rules of "our" game ahead of time, the student-volunteers, representing the entire class, were allowed to negotiate their own deal without outside interference. Only when the bargain struck by them was found lacking an expected element – a candy bar for each – was it necessary to rely on formal "rules" for achieving a fair, if not totally satisfactory, resolution. In their ensuing arguments, this class learned firsthand some of the rudimentary skills of conflict management.

The final lesson is that deals and business arrangements of many types may not always be completely satisfying to every party, but a sense of fairness and justice can be achieved within the limits imposed by factors outside the control of anyone. And that, after all, is the purpose of law.

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Due Process

People Who Make Courts Work/Grades K-3 — **Dale Greenawald**

Beginning with a situation centering on a person accused of committing a crime, students identify the various types of persons (roles) which must be present for due process (fair procedures) to occur in determining the person's guilt or innocence.

The teaching time is approximately 30 minutes, and you'll need signs for students to wear: Judge, Defense Attorney, Prosecuting Attorney, Court Reporter, Jury (enough for all the rest of the class).

Procedures

Begin by telling students that a hypothetical person, Maggie (don't use the name of a student in the class), has been accused of throwing a rock through a school window. Remember, a person is believed to be innocent until he or she has been proven to be guilty.

Courts try to find the truth by using processes that assure that the accused person has a fair chance to defend him/herself.

Many people have important roles to play in a court. They make certain that we all do things that are fair when the court tries to decide if someone broke the law or not. Who do we need to be in charge of making sure that everyone does things the fair way? (Answer – judge)

Class Discussion: What do judges do? Resource person guides this discussion and adds any important information which students may not know. At the end of the discussion ask for volunteers to be the "judge." Select one student, have him/her wear a sign saying "Judge" and take a seat up front.

Next, ask who do we need to help Maggie tell her side of the story? This person needs to know all about the law and the rules of the court. (Answer – lawyer or defense attorney)

Class Discussion: What do lawyers do? Again, the resource leader leads this discussion, sharing additional information which the students may not know. At the end of this discussion a child puts on a sign "Defense Attorney" and sits facing the judge.

Who do we need to represent the school and tell the school's side of the story? They also need to know the laws and rules of the court. (Answer – prosecuting attorney)

Class Discussion: What does a prosecuting attorney do? Again discussion is led by the resource person. At the end of the discussion a child puts on a sign "Prosecuting Attorney" sign and sits facing the judge across the room from the defense attorney.

Who do we need to keep a record of what happens to check for mistakes and make sure that everything that happens is fair? (Answer – court reporter)

Class Discussion: What do court reporters do? Resource leader explains importance of a written record, then appoints a child to be court reporter.

The law says that people accused of crimes can choose to have people like them decide if they are innocent or guilty. These people are the jury. You will be the jury (rest of children put on signs saying "Jury.")

Class Discussion: What does a jury do? How does it find defendants guilty or not guilty? How does it decide?

Conclusion

Conclude by describing all of the roles discussed and explain that they are important if everyone is to be treated fairly. Point out that

- both sides have the chance to tell their story
- the judge does not take sides
- the jury decides on the basis of what it hears in court

Is this a fair way to decide cases? Why or why not?

Mediation and the Adversary Process/Grades 5-8; 9-12

Melinda Smith

Because law-related education focuses on the judicial system, and because mock trials are an appealing strategy, we often overlook nonadversarial methods of conflict resolution.

The following strategy is intended to contrast mediation with the more familiar adversarial process. It can be used with students in grades five through high school. The cases used can be changed according to the age and sophistication of students.

The Two Cases

CASE 1 (GRADES 5-8)
Plaintiff: Tony
Defendant: Jody

Jody was sick and couldn't go on her paper route, so she asked Tony to do it for her. She agreed to pay him $2. Tony delivered the papers, but didn't put plastic bags on them. It rained and the papers were ruined. Jody refused to pay Tony the $2.

CASE 2 (SECONDARY)
Plaintiff: Cecil Jackson
Defendant: Sarah Miller

Sarah Miller moved into a house next door to Cecil Johnson, a retired man who spends his time landscaping his yard. Mr. Jackson had grown an eight-foot hedge between the two houses. According to Sarah, the hedge blocked her view of the street when she backed out of the driveway, so she asked Mr. Jackson to trim it. After several weeks with no response from Mr. Jackson, Sarah cut down the hedge because she believed it to be a danger to her. Mr. Jackson is furious and wants Sarah to replace the hedge at a cost of $435.

Adversarial Action

Explain to students that they will experience two different methods of resolving disputes: the adversary process of the court, and the mediation process, which takes place in neighborhood justice centers in cities throughout the country.

Divide the class into groups. Explain that the groups will first role play a case using the adversary model. One person in each group should play the plaintiff, a second the defendant, and a third the judge.
Explain the court procedure as follows:

1. Judge asks plaintiff to give his side of the story.
2. Defendant then gives his side of the story.
3. Judge can ask questions, during and/or after hearing from the parties.
4. Judge makes a decision and delivers it.

Conduct simultaneous role plays. They should take about 10 minutes. Then with the entire group ask the following questions:

1. Was the role of judge difficult? What did they like or dislike about being judges?
2. Did the plaintiff and defendant think they were treated fairly. How did they feel about the judge's decision?

Mediation in Action

Explain that students will next mediate the same case. Allow at least 15 minutes for this role play. The judge will become the mediator, and plaintiff and defendant will now be called the disputants. Have the plaintiff and defendant switch roles from the first role play. Explain that the mediator does not make a decision in the case. His/her role is to help the disputants reach an agreement. The procedure is as follows:

1. Mediator explains that in mediation the two parties will make their own agreement. They must not interrupt each other. If the need arises, the mediator will talk to each party separately.
2. The mediator asks each disputant to define the problem as he or she sees it and express feelings about it.
3. Each disputant defines the problem and expresses feelings about it.
4. The mediator restates views of both disputants. The mediator asks questions to clarify issues.
5. The mediator asks disputant #1 if he or she has a proposed solution for the problem. The mediator then asks disputant #2 if he or she agrees. If not, the mediator asks disputant #2 for a proposed solution and asks disputant #1 if he/she agrees.
6. If there is an agreement, the mediator restates the agreement to make sure both disputants approve.
7. If no agreement is reached, the mediator talks to each disputant separately, asking each how he or she is willing to solve the problem. Then the mediator brings them together and asks them to offer their solutions. The mediator will repeat step six if an agreement is reached.

Making Comparisons

After the allotted time, bring the class back together and debrief with the following questions.

1. How did being a mediator compare with being a judge? Was it easier or more difficult?
2. Did disputants think they were treated fairly? How did they feel about the process?
3. Was a solution reached? How did it compare to the judge's decision?
4. What are the advantages and disadvantages of each method of dispute resolution? What kinds of conflicts are best suited for each method?

Melinda Smith is a trained mediator and directs a school mediation program in which students are trained to mediate school-related disputes. She also directs the New Mexico Law-Related Education Project.

Fundamental Freedoms

Teaching About Search and Seizure/Grades 9-12

Susan Wise

Here is a "model" class on the Bill of Rights, search and seizure and student rights and responsibilities.

Before going to class, get to know the subject. Review the brief description of *New Jersey v. T.L.O.* on page 11.

Why You Are Here

- To introduce to students the meaning of the Fourth Amendment's protection against unreasonable search and seizures and the source of that protection in the constitutions of the United States and your state.
- To have students apply their Fourth Amendment protections to situations which arise within a school setting.
- To have students understand the reasons why limitations exist to students' Fourth Amendment protections.
- To have students recognize how the responsibilities of school administrators may conflict with students' Fourth Amendment protections.
- To give students the opportunity to discuss constitutional issues which directly affect them.

Procedures

Classroom activities can be performed within the 45 minute time period.

Questions to start you out include

- "Do you have any rights?"
- "What are they?" (This can produce a myriad of variations.)
- "Where do they come from?" (Here you can start from the particular [school rules] and go all the way to the Constitution.)
- "Where does it say in the Constitution that you have a right not to be searched?" (Here you get into the Fourth. Use concrete examples: Find a student with a purse, gym bag, etc. and ask if you can look into it. If not, why not?)

Following are four hypotheticals, any of which you can use to spark discussion of rights and responsibilities in a school search situation. (One way to relate the situations more directly to the students you're talking with is to change the names of the students in the hypotheticals to names of students in your class.)

You can either read the hypothetical to the class or summarize it for them before getting into the suggested questions.

Whose Locker Is It?

Dwayne's high school had been having many problems with vandalism. In the past week there had been a fire in the girls' rest room, four windows broken, and a small explosion caused by three cherry bombs in the boys' locker room in the gym. Rumors were running all through the school as to who caused the explosion. One such rumor made it to the principal's office when two students told the principal that they had heard that Dwayne had a bag of cherry bombs in his locker.

The principal called Dwayne into his office and asked him if he had any cherry bombs in his locker. Dwayne said he did not, but the principal was not convinced. He told Dwayne that if he did not have the cherry bombs in his locker, then he would not mind the principal's opening the locker to make sure. Dwayne said he did not want anybody going through his locker and would not open it up for the principal.

The principal became angry and said he would open it anyway and called the custodian to bring the master key. Dwayne became very upset and yelled at the principal that he knew his rights and that the locker was his and no one could open it without his permission. Disregarding what Dwayne said, the principal went to Dwayne's locker, opened it with the master key and found all kinds of art supplies which had been missing from the art room, but found no cherry bombs.

SUGGESTED QUESTIONS FOR DISCUSSION

Do you think the principal had good reason to open and search Dwayne's locker?

Do you think the principal had a responsibility to the students and teachers to follow all leads in order to find out who set off the explosion in the boys' locker room?

Who do you think owns the lockers in schools?

Can you think of how use of a school locker may be different from use of a locker in a bus station, or a post office mail box?

Do you think a principal should have the right to open and search a student's locker without that student's permission?

Can you think of any situations where you might open and search a student's locker without permission if you were a principal?

Did Dwayne know his rights?

May a principal open and search a student's locker without the student's permission?

Do you think Dwayne set off the explosion in the boys' locker room? Why? Why not?

Did the principal find in Dwayne's locker what he was looking for?

Do you think a policeman can open a student's locker without that student's permission?

What does a policeman need to have before he/she could open a student's locker?

What is a search warrant? When is one used? Who uses search warrants?

Warriors v. Giants

The past two weeks at the high school had been terrible. Four students were sent to the hospital, two students arrested, and all the students frightened about their safety as a result of a gang war between the Warriors and the Giants taking place not only in the school but also in the community. The two gangs began warring when the Warriors blamed the Giants for slashing the tires on the car of one of its members. The Giants denied having done it, but soon tempers began to rage and within two weeks there was a near riot in the school cafeteria resulting in the injuries and arrests.

In order to ensure the safety of the students and the staff, the principal decided that each student would be frisked upon entering school to check for weapons. Many of the students thought this was a good idea, but others believed the principal had no right to frisk them and would not allow themselves to be frisked. Some of these students were not members of either gang. When they refused to be frisked, they were not permitted to enter the school.

SUGGESTED QUESTIONS FOR DISCUSSION

Why did the principal decide to frisk each student as he/she entered school?

What exactly takes place when a person is frisked?

Does a principal have the responsibility of maintaining a safe school?

Do you think that by frisking each student as he/she enters school the students and teachers will be safe? Why? Why not?

Do you think the principal has the right to frisk students before they enter the school?

Why would a student object to being frisked before entering school?

Would you mind being frisked each morning before you entered school? Why? Why not?

Do you think a policeman instead of the principal should be the person doing the frisking at the school?

What if a parent had a meeting at the school? Would the principal frisk the parent?

Do you think the principal frisked each teacher before he/she entered the school?

Do you think the teachers would object to being frisked before they entered the school each morning?

Missing Books

The school librarian, Mr. Richland, informed the social studies department faculty that three expensive books on ancient Greece, which had been purchased recently by the school for reserve use but had not yet been checked in, processed, and labeled by the library, were already missing. Miss Sullivan, a world history teacher, said that she had recently given her students a term paper assignment and that she knew that one boy had decided to write about the government of Athens. She suggested that the librarian check with the boy, Bruce Dandridge.

Because of a rash of book thefts during the past year (hundreds of dollars worth of books had "disappeared"), Mr. Richland decided to take the information directly to the school principal. He asked that Bruce's locker be inspected to search for the books.

The principal, in the librarian's presence, opened the boy's locker while Bruce was in class. They discovered the new ancient history books, which had not been checked out from the library. When confronted with the evidence, Bruce admitted that he had taken them, but argued that his right to privacy had been violated by the locker search. Because he had been in some disciplinary trouble before in school, and in view of the strict school rules against misappropriation of school property, a suspension hearing was called, and Bruce came with his parents' and their family lawyer.

Questions. What are the main issues raised in this case? How does the interest of Bruce's privacy balance out against the school's interest in preventing theft? If this case were to come before a court, how do you think it would be decided?

Police Called In

Frank Perkins had a free period plus his lunch period back to back on Monday. Since school rules permitted students to leave the grounds when they did not have class commitments, he went downtown to the Sound and Fury record store. The store owner, Jack Maloney, was sure that he had seen Frank put one or more albums under his coat and leave the store without paying for them, but he was unable to catch up with Frank.

As an independent businessman, Mr. Maloney was concerned about the increased costs of shoplifting. He thought he recognized Frank as a student from nearby River View High School, and upon checking with the school over the phone he was able to ascertain his name.

Later that afternoon, Detective Shableski of the local police came to the school following a complaint from Maloney and asked the school principal whether he

could have permission to search the boy's locker for the records. Consent was given.

Questions. If stolen record albums are found, are they legally admissible evidence? A police search without a warrant is valid only if consent has been given. Who has the authority to give consent? Only Frank Perkins?

If you are a student in school, do you give to the administration the right to consent to a search of your locker when it issues you a locker. If a locker is protected from warrantless search, can you be forced to give up that protection by signing a release?

An Actual Warrant

Another way of initiating a discussion of search and seizure with students is to pass out copies of a sample search warrant (see page 12 of the Spring, 1978, issue of *Update on Law-Related Education*) and discuss its contents and its use. (Make sure to have enough copies for everyone made ahead of time.)

After students have examined the warrant and shown that they understand the terminology, you can use its various components to illustrate such concepts as the need for probable cause, a specific description of the place to be searched and property to be seized, etc.

AFTER LEAVING THE CLASSROOM

If you said you would send students or the teacher material, don't forget to do so.

A letter to the class thanking them for the opportunity to discuss a very important subject is a nice touch.

New Jersey v. T.L.O.

On January 15, 1985, a divided United States Supreme Court issued a decision on a school search and seizure issue, *New Jersey v. T.L.O.*, 53 U.S.L.W. 4083.

FACTS

A high school principal searched the purse of a 14-year-old female student after the student denied an accusation by a teacher that she was smoking cigarettes in a nonsmoking area, a violation of a school rule. The search resulted in the discovery of cigarettes and rolling papers, the latter item, in the experience of the principal, being associated with marijuana. The discovery of the rolling paper prompted a more thorough search of the purse which revealed marijuana, a pipe, and other items implicating the student in marijuana dealings.

The principal notified the authorities and subsequently turned over the seized evidence to the police, who on the basis of the evidence and a confession, filed delinquency charges. At her delinquency hearing, T.L.O. sought to suppress the evidence and the confession because the former was alleged to have been seized in violation of the Fourth Amendment while the latter was alleged to have been tainted by the alleged unlawful search.

DECISION

The Court was asked to determine whether the Fourth Amendment's "prohibition on unreasonable searches and seizures applies to searches conducted by school officials." A majority of the Court held that it did.

The majority reasoned that school officials, in carrying out searches, were representatives of the state and not merely surrogates for the parents.

Having determined that the Fourth Amendment was applicable to school officials, the Court was faced with a determination as to the standards governing such searches. In so deciding, the Court had to strike a "balance between the school child's legitimate expectations of privacy and the school's equally legitimate need to maintain an environment in which learning can take place." The majority held that "the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search."

The reasonableness of a search is determined by (1) "whether the search was justified at its inception;" and (2) "whether the search was reasonably related in scope to the circumstances which justified the interference in the first place." The Court held that "when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school" the search is justified at its inception.

The Court noted that the search must not be "excessively intrusive in light of the age and sex of the student and the nature of the infraction."

The extent of a student's protection from unreasonable searches and seizures usually depends upon whether (1) a school or a police official conducted the search, and (2) the search is of one's person or of a place.

Although it is clear that the Fourth Amendment protects people and not places, the nature of the place may determine whether the person had a reasonable expectation of privacy. Thus, courts have upheld warrantless searches of lockers by school officials where it was known that school officials had a master key and reasonable grounds existed for the search. An authorized and voluntary consent to a search by a student will usually validate a search that would otherwise be illegal.

Courts have found that a student has no reasonable expectation of privacy in his/her school locker but have usually provided minimal safeguards where a student's clothing or body has been searched. A recent court ruling upheld a decision that dragnet sniffing of children by dogs (to search for drugs) was impermissible, but noted that such sniffing of cars or lockers by dogs was permissible.

How Judges Decide/Middle and Secondary

Shirley S. Abrahamson

Another public speaking engagement on the calendar – this time, a high school. Normally, the overriding feeling is dread: 45 minutes watching glazed eyes or squirming torsos as I give a justice's traditional speech on the operation of the Wisconsin judicial system. The eyes and the torsos have been the same whether the audience is young or old – the young just don't hide their boredom as well. How do I get them to listen, to be interested, even enthusiastic? How do I get them to understand that a judge is not like a computer; that a judge is not a warehouse of all information about the law who mechanically dispenses the law? A judge, unlike a computer, must think, must exercise judgment.

The class door opens. I am ushered in. And this time, I hope, there will be no glazed eyes or squirming torsos. I begin.

A Bit of Magic

"The best way for you to learn about judges, judicial decision making, and courts is for you all to be judges. Are you willing to serve as judges of the State of Wisconsin for the next forty-five minutes?" (Silence.) "Without pay?" (Laughter, and then a fairly enthusiastic "Why not?" And so we're off.)

"We have three kinds of judges in Wisconsin – trial judges, court of appeals judges, and supreme court justices. I'm going to ask you to serve as judges on these three courts. But before I do, I want you to know that all judges of the state must take the same oath, an important oath: to support the U.S. Constitution, to support the Constitution of Wisconsin, and to administer justice fairly and impartially to everyone – whether old or young, rich or poor, of one race or another, man or woman, religious or atheist. I shall ask you each to abide by that oath and to remember that for the next 45 minutes you will be wearing, at least mentally, the black robe – a symbol to yourself and to all who view you that you are a guardian of the public trust for the people of the state.

"Remember, the people have selected you to judge them, to decide their disputes – to decide whether they keep their driver's licenses" (this audience understands that, all right), "or whether they go to prison. Whatever the matter, it's important to the people who have brought it before the court. You did not ask the parties to bring this case to court. But unless you settle this dispute, it will not get settled.

"Are you willing to wear the black robe for this class hour?" (They are still with me, and the responses are positive. So I wave my hands as a magic wand.)

"Poof – you are 'judges of the State of Wisconsin.' Well, 'judges,' here's the case that will wind its way through the courts.

"The Wisconsin legislature – one hundred thirty-two persons strong (ninety-nine in the assembly, thirty-three in the senate) – has enacted a statute saying that in multifamily dwellings (that is, with three or more dwelling units) the landlord may evict a tenant who has a pet. Now in your hometown there is a five-family unit, and a tenant asks the landlord to come repair a leaking kitchen faucet. The landlord arrives, and he sees a glass bowl on the kitchen table; in the glass bowl there are about four cups of water, and, in the water, there are some pebbles and one three-inch goldfish.

"Now the landlord likes the tenant, but he doesn't want any pets. The landlord describes the statute and gives the tenant a choice: one, get rid of the fish and stay; or, two, keep the fish and leave the apartment for good. The tenant

tells the landlord he likes the fish. The fish's name is Tootsie, and she is a good companion. The tenant thinks it's silly to have to move because he owns a fish. He tells the landlord there's a third alternative, and it is the one which he is going to take. He's keeping the fish and the apartment.

"Well, what happens when two people can't settle a dispute amicably? What's the American solution?" (The group is warming up to the problem and the response quickly comes—"Take it to court.") The landlord brings his action in the trial court.

"In Wisconsin, the trial court is the circuit court, and in each county (except for several northern countries) there is at least one circuit court. Here, the courthouse is just a couple of blocks away. By the way, how many of you have ever been there? I don't mean to get personal." (Laughter, a few hands go up.) "How many of you have ever watched programs about law, lawyers, and judges on TV?" (More laughter, all hands go up.) "Well, I suggest you visit court and take your folks. Court is interesting. Court sits five days a week, one Saturday and one evening a month in this community. The courtroom is warm in the winter and cool in the summer. And the price of admission is right—the courtroom is open to the public free of charge."

The Trial

(Now the scene is set—a trial courtroom, the witness stand, the jury box, the court reporter, the single black-robed judge ascending the bench, the audience rising to the words of the bailiff and the case of *Landlord v. Tenant* being called.)

"And the landlord takes the stand, is sworn to tell the truth, and he tells you about finding Tootsie. And then the tenant takes the stand, is sworn to tell the truth, and he describes Tootsie. He also has a letter from each tenant in the building saying that the tenants have no objection to Tootsie—didn't even know she was in the building. And that's the sum total of the testimony. There's no dispute about the facts: Tootsie is a three-inch goldfish residing in four cups of water in a bowl in a multifamily dwelling unit of more than three families.

"In some cases, there is a jury, but in this case there is none." (I might discuss when a case is heard with a jury and the function of the judge and jury.) "The judge takes the case under advisement and tells the parties she'll render the decision in a week.

The Decision

"The judge is alone. She has no one to talk to about Tootsie—not fellow or sister judges who are busy with their own cases, not her husband, not her son. The judge has to wrestle with the problem herself.

"But here we'll think out loud and all of us will discuss the issues facing the trial judge. We'll discuss the pros and cons of deciding the case in favor of the landlord or the tenant. After the discussion, I'll ask those of you in the left six rows to be the trial judge and to decide the case."

(Now it's time for a discussion among the "judges" of the merits of the case and the issues. The discussion varies with the audience, but invariably the Tootsie technique works. On the surface, it is a simple case, but I think I could use it to teach several weeks of a law school course on the judicial process and statutory interpretation.)

"Well, what's the issue the judge has to decide?" (A response: "Whether to evict the tenant?")

"Yes, but to decide that issue what must the judge decide?" (A comment from the back—"Whether the goldfish is a pet.")

"Yes, and how do we decide whether a goldfish is a pet?" (A "judge" ventures—"Well, we all know that.")

"Well, then, define *pet* for me." (Great hesitation.)

"Okay—how do we get a good working definition of *pet*?" (One "judge" may ask whether the statute defines the term.)

"It could, but it doesn't."

(Another "judge" may ask about the lease, which may lead us into a short discussion of contracts—private legislation—and statutes—public legislation—and the relationship between the two. To end that line of inquiry, I say the lease is silent as to pets. Another "judge" wants to look at the dictionary, and we do.)

"*The Webster's New World Dictionary*, Second College Edition, defines *pet* as 'an animal that is tamed or domesticated and kept as a companion or treated with fondness.' Is Tootsie a pet as that word is defined in the dictionary?"

(One "judge" suggests Tootsie is not a pet—she cannot be cuddled or trained. I then test this definition.)

"Suppose the tenant has a ferocious tiger in a cage? Under your definition is the tiger a pet? Should it be a pet under the statute? We are looking for what the legislature meant by the word *pet* in that statute for eviction purposes.

"Why do we look at a dictionary? Because if a term is not specifically defined in a statute, we assume that the legislature, which regulates all our conduct, is using the word as it is commonly used and understood by everyone.

"What we as judges are doing in this search for the definition of pet is what your textbooks say judges are supposed to do—interpret the law. Remember the three branches of government: the legislature makes the law; the judiciary interprets the law; and the executive enforces the law. In deciding whether a goldfish is a pet, we are trying to determine legislative intent, legislative policy, legislative purpose. Did the legislature intend Tootsie the goldfish to be a pet within that statute subjecting her owner to eviction? That is the issue the trial judge must decide. One way to determine legislative intent is to look at the statutory definition of the term, another way is to look at the dictionary. Well, we took those two steps. What else can we do to determine legislative intent?"

(A variety of responses: We can call the leaders of the legislature, all 132 legislators, and the governor.)

"It won't help us to call the legislature or the governor. First of all, when you call the legislature whom would you talk to? Which governor? If the statute had been enacted two years ago, perhaps the governor who signed the bill into law and most of the legislators who voted on the bill might still be in office. But what if the statute is ten, even fifty, or a hundred years old? Second, with a large number of people voting on any one bill, not all of them will necessarily believe the law means the same thing. The governor and legislature may not agree on

what the law means. For these reasons, an individual legislator's comments on legislation are not considered appropriate proof of legislative intent."

(I point out that the search for legislative intent is a usual part of a court's work. Probably more than half of our court's cases involve interpretation of the constitution, statutes, and regulations. There are other points to be made, but they can be made when we discuss the case as appellate court judges. And so I say. . .)

"Well, the week has passed; the case has to be decided. As you know, justice delayed is justice denied. But, remember, you have to give people time to prepare their cases for court, and the judge has to give each case due consideration. Justice rushed may be justice crushed. In any event, it's time for the trial judge to make a decision. Reaching a decision is hard work.

"I want you all to close your eyes and ponder the fate of Tootsie. I want each of you 'judges' to make up your own minds and not be influenced by how others decide the case. A key attribute of good judges is that they have open minds—they are neutral, they listen carefully to the facts, they search the law, they weigh the arguments. But each judge must make up his or her mind and vote independently, and not be pressured by other judges, the media, or public opinion. Tough decisions will not always be popular ones.

"It's time for you 'trial judges' to vote even if all your questions have not been answered. Everyone in the room close your eyes, tightly. Remember the figure of Justice is blindfolded.

" 'Trial judges'—the six rows on the left—how many of you decide that the legislature intended the word *pet* in this statute to include a goldfish and that Tootsie must be evicted? Please raise your hands high.

"How many of you 'trial judges' decide that the legislature intended that the word *pet* in this statute not include a goldfish and that the tenant not be evicted? Please raise your hands high."

(Invariably there's a split vote. The split depends on the nature of the discussion to this point.)

"In a real trial there's one judge. Here we'll let majority rule, and the majority of the 'trial judges' evicted the tenant. The tenant lost; what can he do?"

(He can take his loss and move, or he can appeal, comes the response.)

"Right. And he appeals to the court of appeals—which is the middle six rows."

(This provides an opportunity to describe briefly the structure of the Wisconsin court of appeals and the difference between a trial and an appellate court.)

The Appeal

"In the appellate court there are no witnesses, no jury—just the record, briefs (which include the written arguments of the tenant and the landlord), and oral argument by the attorneys. The appellate court reviews the decision of the trial court to determine if there was prejudicial error of law.

"There are three judges in the court of appeals, seven justices on the Wisconsin Supreme Court, and nine justices on the United States Supreme Court. All appellate courts have an odd number of judges—the judges are all right, but the number is odd. Why odd?"

(The "judges" have the answer to this one—to avoid tie votes. And maybe a question will be raised about disqualification of judges, illness, or replacements for disqualified judges.)

"And so the judges of the court of appeals read the briefs, hear oral argument, and retire to the conference room to discuss the case. Their discussion will be similar to the one we have been having. So we'll take up our discussion where we left off. Remember? We were searching for legislative intent."

(The hunt goes on and takes us through legislative history, bill jackets, committee papers, other laws, our common sense reasoning about why a legislature would pass such a law. A discussion ensues about the legislature wanting to keep out of apartments animals that may be nuisances—animals that make noise, create unsanitary conditions, or cause property damage. And I may try to wind up the court of appeals discussion saying. . .)

"So the legislature may have intended 'pet' to mean not the dictionary definition, but those animals that create problems for the neighbors—noise; dirt; safety, health, and property damage. And it is time for the court of appeals judges—the middle six rows—to make their decision and cast their vote. And the issue is a legal issue—the same one the trial court faced. 'Judges,' close your eyes."

(And I state again the questions and call for a decision. The "judges" split again, perhaps differently, and the majority rules.)

"This time the landlord lost. What can he do?"

The Supremes

(Again we discuss the alternatives and, of course, the landlord wishes to appeal to the supreme court. Cost is no object—it's a matter of principle. We might discuss the costs of trial and appeal, including attorney fees, and the right of each person to represent himself or herself or to retain an attorney. If litigants represent themselves, I explain, they must prepare and learn about the law. It's no different from when they repair their car: they must learn how to do it. I note that in the six years I have sat on the Wisconsin Supreme Court, individuals represented themselves in two cases, and each won. My statistics show if there is self-representation there is a 100 percent chance of winning; if there is representation by counsel, the chance of winning is about 50 percent.

(I describe the authority of our court, on a minority vote of three, to decide to review the decision of the court of appeals. And we discuss whether this case is a small-fish-in-a-small-bowl case or one involving an important matter of landlord-tenant law. Of course, the supreme court decides to hear the Tootsie appeal.

(I then describe the supreme court courtroom, the composition of the court, the election and term of justices, and the similarity of procedure between the supreme court and the court of appeals. I ask the "justices" to assume that they have read the briefs and heard oral argument, that they are in the supreme court conference room to discuss and decide the case, and that they should assign a justice to write the opinion. I also tell them that my law clerk refers to justices of the supreme court as "the supremes." And so our discussion continues. . .)

"Well, one supreme court justice might say that the court of appeals held Tootsie wasn't a pet because Tootsie didn't disturb the neighbors. She might ask the brethren, 'How would you vote if Tootsie were a toothless miniature schnauzer, who couldn't bite or chew, who had chronic laryngitis so it didn't make noise, who wore tennis shoes, was paper trained, and never left the apartment?'

"Do we want to interpret the law in such a way that the courts of this state must look at every dog to determine whether it's a good, quiet dog? Or do we want to say that because dogs generally bark and chew, all dogs must be classified as pets? What about fish? Can we say fish generally are not troublesome and therefore are not pets? What if Tootsie could bite and was kept in a tank near an open window on the ground level, accessible to a three-year-old child?

"Maybe a statutory interpretation that is easy for courts to administer and for people to understand is better than an interpretation that provides for judicial discretion and application of a complex definition." (One "justice" suggests the court interpret the statute as providing a three-inch rule—all animals over three inches are pets; all animals under three inches are not.)

"What if the next goldfish, stretched end to end, measures three and one-tenth inches?" ("I'd stretch the rule," quickly comes the "justice's" response.)

Interpretation vs. Legislation

"Remember 'justices,' we're to interpret the laws, to fill the gaps left by the legislature. We're not here to legislate. Nevertheless we must recognize that to decide this case we have to make choices. Well, suppose we were the legislature, how could we have drafted a better statute?"

(The discussion shows that it's not easy to draft a statute that covers all eventualities and avoids ambiguity. I agree to take one more comment before the supreme court justices vote. A "justice" thoughtfully asks whether this court or any other court has decided this issue before.)

"That is an excellent question. If another court had decided the issue, we would have the benefit of its thinking and reasoning. Also, a basic concern of our system of government is that all people similarly situated be treated the same. Courts follow precedent. The owner of a goldfish in this county should be treated the same as the owner of a goldfish in the next county, as long as the law remains the same. This concern for fairness finds its constitutional expression in the equal protection and the due process clauses of the state and federal constitutions, which we swore to uphold.

"But as judges we need not follow the cases of other states, just of our own state. The reasoning of the judges in other states may be helpful in persuading us, of course, and it's up to the lawyers and to us as judges to find those cases through research. A judge should have a good legal education, and a judge must continue his or her education while on the bench to keep up with developments of the law. Our supreme court requires judges to take courses each year. But, too bad, our case is the first in the country."

(Again, it is time to vote, and I follow the procedure used with the "trial judges" and the "court of appeals judges." Again, there is a split, and I announce that the majority wins. We discuss the rationale the opinion will use. I stress that the court not only must answer the question presented in the case but also must give a reasoned answer. Resolving the dispute requires the court to make choices considering the statute in issue, other rules of law, and the policy underlying the laws. The court must explain why and how it made the choice it did. The court's rationale will guide lawyers in advising clients and will guide other courts in deciding future cases.

(We might discuss dissenting opinions, publication of opinions, and the availability of the opinions to the public via the media and libraries. I remind the "justices" that there is parallel system of federal courts, which I describe briefly, and that the loser might, if he can pose a "federal question," take the case to the U.S. Supreme Court. Or the loser might take the issue back to the legislature and seek an amendment of the statute.

(Our time is up, and so I conclude...)

"I enjoyed serving with you 'judges' today. I do not think you decided the case by applying labels to the issue—liberal or conservative, strict or liberal construction. You did not decide as you did because you like or dislike fish, dogs, or cats. I think that you did what all good judges do. You were guided by principles and policies set forth in our laws, not personal predilections. You tried to be reasonable and fair.

"Judging cases is similar to making other decisions in life. Each of us makes decisions every day. Some days, the most important decision I make is whether I should let my 17-year-old son have the car that night. The fundamentals of judicial decision making are much the same as the approach we use to solve problems at home and at work. You have a rule that embodies a family or company policy, a family or company value. You have a set of facts. You try to apply the rule and the policy underlying the rule to the facts and come out with a sensible decision.

"Even though you came to the bench as 'judges' with certain experiences, personal beliefs and values, and preconceptions—all people have them—you tried to put them aside and to act in a principled way, to be fair, to do justice. You tried to apply the policy established by the legislature in a rational, meaningful way in the fact situation presented to you. You applied the law to the facts of the case as best you understood the facts and the law. That is what we can and should expect from all our judges.

"I enjoyed serving with you. Now your term as 'judge' must end." (I wave my "magic" hand once more and say...) "Poof—you are no longer 'judges.' Oh, by the way, I have sad news to tell you. Just as the supreme court made its decision, Tootsie died. It takes about a year and a half for a case to go through the state court system, which is just about the average lifespan of a goldfish."

(I sit down to laughter, but they want to talk some more about a variety of topics—mootness, frivolous actions, conflicting decisions of judges, uncertainty in the law, too much litigation, the costs of the system to the taxpayer, and on and on...)

Shirley S. Abrahamson is a justice on the Wisconsin Supreme Court and a member of the American Bar Association's Special Committee on Youth Education for Citizenship.

Twelve Hints for Lawyers

by Leslie A. Williamson, Jr.

During the past several years, I have addressed several hundred Connecticut public school students on student rights and responsibilities. My discussions with these students have been an educational experience for me and, I trust, for the students.

Based upon my "hit and run" classroom experiences, I was asked to prepare some hints for members of the Connecticut bar on talking to public school students. The following, not in any particular order, are my suggestions.

1. *Know Your Subject*
   This is an obvious hint but nonetheless an extremely important one. Spend some time reviewing material prior to addressing students. Don't underestimate the breadth of their knowledge, their awareness of the law and their interest in the law.
2. *Have a Plan but be Prepared to Vary from It*
   Before you walk into the classroom, you should know what you want to say and how you are going to say it. Establish a presentation outline. (See suggested procedures for teaching search and seizure, pages 9-11.) However, the more interest you generate, the more probable it is that you will get "off track." Don't be afraid of this but don't put yourself in the position where you are unable to get back on track.
3. *Stress Responsibilities as well as Rights*
   You are a guest of the local board of education. The role of your host is to provide students with an education. Your discussion will be integrated within the general goal of the board. Therefore, remember that you are in the school as a lawyer-educator, not a student advocate. Your presentation should stress responsibilities as well as rights. Don't forget to highlight the responsibilities of a board of education.
4. *Control the Classroom*
   Don't expect a teacher to control the classroom for you. When you are in front of the class, you will be tested – on you knowledge of the subject and your management of the students. If a student misbehaves, do something – don't ignore the situation. Don't wait for the teacher to act because, oftentimes, the teacher won't.
5. *Talk with the Students, Not at Them*
   Most students are interested in the law. They will engage in meaningful discussion if given the opportunity. Give them that opportunity! While you may want to spend the entire period lecturing, it is strongly recommended that you don't.
6. *Don't Act Like a Lawyer*
   Certainly you should not take this hint too seriously. However, remember you are not addressing a judge but rather a group of students. Talk with them in words they can understand and take time to explain words or concepts which might not be readily known to your audience. Integrate concepts.
7. *Don't "BS" the Students*
   If you know the answer to a question, answer it. If you don't, tell the students that you don't. If you try to "BS" the students they will know it very quickly and your credibility will be lost.
8. *Use Hypotheticals*
   Use examples to illustrate points you are trying to make. Develop hypotheticals from your imagination or from recent court decisions.
9. *Watch Your Time*
   As interesting as you will be, most of the students' attention span will parallel the class schedule. When the bell rings, they want out! Know when the class is over and time your presentation accordingly.
10. *Work the Class and Work with the Teacher*
    I never lecture, nor do I stand in one place. Move around, interact with students, get each one involved.

    Talk with the teacher before class to determine which material should be emphasized, the background of the students, and what will be done with the subject matter once you leave.
11. *Don't Accept What "Is" – Discuss Why It "Is"*
    Students will often base answers on personal experiences or school policy. What "is" may not be correct. Challenge students to determine why something "is" and ask whether what "is" is appropriate.
12. *Don't Get Caught in the Middle of a School Controversy*
    Students will often ask you to determine whether actions by a teacher or administrator are appropriate. Don't get placed in the position of making a judgment on the appropriateness of action taken by an educator or on a pending issue. Try to articulate both sides of the issue.

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